



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0321; FRL-10021-50-Region 5]

Air Plan Approval; Michigan; Partial Approval and Partial Disapproval of the Detroit SO₂ Nonattainment Area Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving a revision to the Michigan State Implementation Plan (SIP) for attaining the 2010 1-hour primary sulfur dioxide (SO₂) national ambient air quality standard (NAAQS or "standard") for the Detroit SO₂ nonattainment area (NAA). This SIP revision (hereinafter called the "Detroit SO₂ plan" or "plan") includes Michigan's attainment demonstration and other elements required under the Clean Air Act (CAA). EPA is approving the base year emissions inventory and affirming that the nonattainment new source review (NNSR) requirements for the area have been met. EPA is disapproving the attainment demonstration, as well as the requirements for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology (RACT), and contingency measures. Finally, EPA is disapproving the plan's control measures for two facilities as not demonstrating attainment and is approving the enforceable control measures for two facilities

as SIP strengthening.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0321. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886-9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-9401, Arra.Sarah@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. What actions did EPA propose on this SIP submission?

On September 18, 2020¹, EPA proposed to partially approve and partially disapprove a revision to the Michigan SIP submitted on May 31, 2016, supplemented on June 30, 2016. EPA proposed to take the following actions:

1) EPA proposed to disapprove Michigan Administrative Code (MAC) 336.1430 ("Rule 430") because the Michigan Court of Claims invalidated Rule 430 on October 4, 2017. Therefore, there is no enforceable rule remaining at the state level for EPA to incorporate into the SIP.

2) EPA proposed to disapprove the Detroit SO₂ attainment plan pursuant to 172(c) and 192(a), because it relied on Rule 430 to demonstrate attainment, which can no longer be relied on as an enforceable mechanism.

3) Because of the lack of enforceable measures from Rule 430, the remaining control strategies can no longer be assessed as a part of a complete attainment demonstration. Instead, EPA proposed to approve two permits as SIP strengthening, Carmeuse Lime's Permit to Install 193-14A and DTE Energy - Trenton Channel's Permit to Install 125-11C. SIP strengthening is appropriate for limits that improve air quality but do not meet a specific CAA requirement.

4) EPA proposed to disapprove the DTE River Rouge permit, Permit to Install 40-08H, because it was recently superseded by a new permit to install, not included in the SIP package, that

¹ 85 FR 58315

corrected an error in the long-term averaging calculation for the superseded permit.

5) EPA proposed to approve the 2012 baseline inventory as meeting the requirements of CAA section 172(c)(3) and (4) for the Detroit SO₂ NAA.

6) EPA proposed to affirm that the new source review requirements for the area have been met because Michigan has a fully approved NNSR Program.²

7) Because the Detroit plan is missing enforceable measures for some major sources of SO₂ and is therefore not able to demonstrate attainment, EPA proposed to disapprove the following:

- The requirements in CAA sections 172(c)(1) and (6) to adopt and submit all RACM/RACT and emissions limitations or control measures as needed to attain the standard as expeditiously as practicable.
- The requirement in section 172(c)(2) to provide for RFP toward attainment in the Detroit SO₂ NAA.
- The requirement in section 172(c)(9) to provide for contingency measures to be undertaken if the area fails to make RFP or to attain NAAQS by the attainment date.

EPA's action to disapprove portions of the Detroit attainment plan will start new sanctions clocks under CAA section 179(a)-(b) which can be stopped only if the conditions

² 78 FR 76064 (December 16, 2013)

of EPA's regulations at 40 CFR 52.31³ are met. Only a full SIP approval or EPA's promulgation of a Federal implementation plan (FIP) under CAA section 110(c)(1) can stop FIP clocks, so this action does not have any effect on the FIP clock that started April 18, 2016.⁴

II. What is our response to comments received on the proposed rulemaking?

The proposed action described above had a public comment period that closed October 19, 2020, and then by request, was reopened until November 16, 2020. This action received 21 supportive comments, nine comments not directly relevant to the rulemaking, and a joint comment letter from Sierra Club and Earth Justice that was partially adverse. This joint comment letter is summarized below along with EPA's responses.

Comment: The commenters contend that the state's modeling contains several flaws and the modeling methodology should be explicitly disapproved. The commenters went on to point out several elements with which they took issue in the modeling. The commenters additionally provided their own modeling demonstration showing further reductions needed from several sources in the area.

Response: The state's modeling is part of the attainment demonstration which is being disapproved as part of this action. Because the attainment demonstration is not approvable due to

³ EPA's regulations regarding the implementation of sanctions requirements required by 179(a).

⁴ 81 FR 14736 (March 18, 2016)

enforceability issues, it is not necessary for EPA to determine whether or not the modeling supports attainment, when the modeling relies on limits that no longer exist. However, EPA has taken note of the modeling concerns in this comment letter and will include them for consideration during the continued attainment planning efforts for this area.

Comment: The commenters pointed out that the reason for the invalidation of Rule 430 was because Michigan does not have authority to impose facility-specific limits. The commenters contend that EPA should consider whether a SIP-call under CAA section 110(k)(5) is needed due to Michigan appearing to not meet the requirement of section 110(a)(2)(E)(i) to have adequate authority to carry out its implementation plan. EPA should also move forward with a FIP if the state lacks proper authority.

Response: Although prohibitions on adoption of individual facility limits in state rules is not uncommon, in this situation it resulted in some of the State's submitted SIP limits being invalidated under state law, which precludes approval of the attainment demonstration and of those limits. EPA expects now that Michigan will draft future rules to avoid this prohibition which resulted in invalid limits and make necessary efforts to properly implement the NAAQS. Additionally, EPA is actively working on continued attainment planning efforts for this area, and the result of this SIP disapproval action will be to impose CAA section 179 sanctions if the State does not take necessary steps to correct the

deficiencies giving rise to the disapproval. Consequently, in this final action EPA is not prepared to exercise its discretion to issue a CAA section 110(k)(5) SIP Call to Michigan regarding this issue, and notes that the State is already obligated to remedy the deficiencies that would be addressed by any additional SIP Call under section 110(k)(5), which, if issued, would occur under its own separate notice and comment process. In addition, in this final action EPA is not able to additionally promulgate a FIP under CAA section 110(c), as that requires its own notice and comment rulemaking process pursuant to CAA section 307(d). Consequently, this final action to partially approve and partially disapprove the submitted SIP does not include any final action under section 110(k)(5) regarding whether to issue a SIP Call, or under section 110(c) to promulgate a FIP.

Comment: The commenters recommended that EPA not approve the Trenton Channel permit as SIP strengthening because the limit is above the plant's actual current emissions and, therefore, does not immediately improve air quality. Additionally, the commenters contend that if included, the limits should undergo a robust analysis on how the 30-day average is appropriate to meet the one-hour standard.

Response: EPA disagrees with both points. The permit's inclusion into the SIP does improve air quality because it restricts the facility's potential to emit at higher levels in the future compared to currently allowable levels, even if the

facility is not currently emitting at the permit's levels or the even higher levels allowed under the current SIP. Additionally, the 30-day average does not need to be evaluated as to whether it is sufficient to provide attainment under the one-hour NAAQS, because the permit is not currently being approved as part of a strategy to meet that standard. However, if the permit is relied on in future attainment planning efforts, a robust analysis of the 30-day averaging limit (and any other limits relied upon in such a future demonstration) will be provided. In this action, EPA makes no final judgment on whether the 30-day limit combined with other future possible limits will provide for NAAQS attainment.

Comment: The commenters stated that EPA should not approve the 2012 base year inventory because it does not meet the CAA section 172(c)(3) requirements of being "comprehensive, accurate, [and] current". The commenters attempted to demonstrate this by showing emission increases at two sources when comparing 2012 to 2018 annual emissions.

Response: During the attainment planning and eventual redesignation process, three different inventories are considered and approved: Base year, attainment year, and future maintenance year. This action is only approving the base year inventory. Base year inventories are a nonattainment year upon which all future attainment work is based. Regarding the commenters' claim that the 2012 inventory is out of date, when Michigan began their attainment planning, 2012 was the most

current year with available emissions data. EPA would not expect a base year inventory to be amended because time has passed since the submittal date. The 2018 data would not have been available until 2019 at the earliest, which was three years after the state's submittal. EPA disagrees with the commenters' second issue, that the 2012 inventory is inaccurate. The commenters' examples of 2018 emissions are from the Michigan Air Emissions Reporting System (MAERS), publicly available annual emissions data for all major sources in Michigan. The commenters compared the emissions increase at two sources between 2012 and 2018 to show inaccuracy in the base year inventory. EPA disagrees that this data proves inaccuracies, but rather demonstrates the variability of emissions over time, generally due to economic factors, i.e. increased affordability of natural gas lowering emissions and increased manufacturing due to economic demands increasing emissions. When comparing all the sources in the inventory from 2012 to 2018, total emissions have decreased by 82 percent, shown in Table 1 below as tons per year (tpy) of SO₂ emissions.

Table 1. Detroit Area 2012 and 2018 Emissions Comparison

Source	2012 Emissions (tpy)	2018 Emissions (tpy)
River Rouge	8,202.52	2,118.48
Trenton Channel	22,426.12	3,114.04
Monroe	49,150.63	3,854.35
Carmeuse Lime	699.69	482.79
Severstal Steel	677.12	571.74
DIG	597.88	820.17
Marathon	137.34	168.39
U.S. Steel	2,874.30	1,482.91
EES Coke	1,900.77	3,253.76

Total	86,666.37	15,866.63
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Emissions inventories are always likely to vary year to year, but that does not deem a previous year's inventory inaccurate. As an example, Dearborn Industrial Generation (DIG), one of the sources pointed out by the commenters as increasing emissions between 2012 and 2018, varies greatly year to year. Looking at data over the most recent 15 years in MAERS, 2003 to 2018, DIG had a lowest value of 364.61 tpy in 2009 and a highest value of 1,038.72 tpy in 2016, showing that the 2012 and 2018 years are both in the middle of the normal annual fluctuations. The eventual action to approve or disapprove an attainment year inventory will consider changes in emissions levels during the attainment planning period, including the differences pointed out in the comment between 2012 and 2018, and additional reductions needed to bring the area into attainment. However, the eventual development of an attainment year inventory will not change the factual basis of the base year inventory. The attainment planning process will account for these possible fluctuations by focusing on potential to emit rather than the actual inventories of any given year. Therefore, EPA believes 2012 is appropriate for a base year inventory, and that the submitted 2012 base year inventory is approvable for its purposes of characterizing what emissions were in that base year.

Comment: The commenters pointed to the language from EPA's proposed approval stating, "EPA modeling demonstrates that

attainment at violating receptors can be achieved when the emission limits in the DTE Trenton Channel Permit are analyzed together with those contained in a recently issued permit for the DTE River Rouge facility (Permit to Install 40-08I)" and contended that EPA should not finalize a finding that revisions to the DTE Trenton Channel and River Rouge permits would be enough to achieve attainment.

Response: EPA is not finalizing a finding that revisions to the DTE Trenton Channel and River Rouge permits would be enough to achieve attainment of the one-hour standard. Such a final determination could be made only upon approval of the state's attainment plan or as part of EPA's promulgation of a FIP. EPA meant this discussion to explain the reasoning for DTE River Rouge alone to obtain a new permit in response to a calculation error found in both the River Rouge and Trenton Channel 30-day averaging limits. EPA is clarifying that these changes alone do not prejudice whether these or any other measures will or will not result in attainment for the entire Detroit area.

Comment: The commenters are supportive of the disapproval of the RACT/RACM, RFP, and contingency measure elements and recommended EPA finalize as expeditiously as possible. The commenters additionally supplied recommendations for next steps in replacing the disapproved portions of this plan.

Response: In addition to the modeling recommendations, EPA will also consider the "next steps" recommendations in this letter as a part of the ongoing attainment planning efforts.

III. What Action is EPA Taking?

EPA is finalizing the following actions as proposed: EPA is approving the base year inventory and affirming that the new source review requirements for the area have been met. EPA is also approving the DTE Trenton Channel and Carmeuse Lime permits as SIP strengthening. EPA is proposing to disapprove the attainment demonstration, as well as the requirement for meeting RFP toward attainment of the NAAQS, RACM/RACT, contingency measures, the invalidated Rule 430 related to U.S. Steel, and the superseded 2016 permit related to DTE River Rouge. This disapproval will start new sanctions clocks for this area under CAA section 179(a)-(b).

IV. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Michigan Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the **"FOR FURTHER INFORMATION CONTACT"** section of this preamble for more information). Therefore, these materials have been approved by

EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁵

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory

⁵ 62 FR 27968 (May 22, 1997).

Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by

Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 11, 2021.

Cheryl Newton,
Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends title 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Amend § 52.1170 by:

a. In the table in paragraph (d) adding in alphabetic order entries for "Carmeuse Lime, Wayne County" and "DTE Energy - Trenton Channel, Wayne County";

b. In the table in paragraph (e) adding an entry for "2010 SO₂ Standard 2012 base year" after the entry for "2008 lead (Pb) 2013 base year" under the sub-heading "Emissions Inventories".

The additions read as follows:

§ 52.1170 Identification of plan.

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(d) * * *

EPA--APPROVED MICHIGAN SOURCE-SPECIFIC PROVISIONS

Name of source	Order number	State effective date	EPA Approval date	Comments
* * * * *				
Carmeuse Lime, Wayne County	Permit 193-14A	March 18, 2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
* * * * *				
DTE Energy - Trenton Channel, Wayne County	Permit 125-11C	April 29, 2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL	

			REGISTER CITATION]	
*	*	*	*	*

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(e) * *

EPA--APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
*	*	*	*	*
Emission Inventories				
*	*	*	*	*
2010 SO ₂ Standard 2012 base year	Detroit area (Wayne County, part)	May 31, 2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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[FR Doc. 2021-05508 Filed: 3/18/2021 8:45 am; Publication Date: 3/19/2021]